

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TAPESTRY, INC.,

and

CAPRI HOLDINGS LIMITED,

Defendants.

Civil Action No. 1:24-cv-03109-JLR

**DECLARATION OF DAVID L. JOHNSON IN SUPPORT OF
DEFENDANTS TAPESTRY, INC. & CAPRI HOLDINGS LIMITED’S
MOTION TO EXCLUDE DR. LOREN SMITH’S OPINIONS REGARDING
AND RELYING ON HIS DIVERSION ANALYSIS**

I, David L. Johnson, declare that the following is true and correct under penalty of perjury, pursuant to 28 U.S.C. § 1746.

1. I am a member in good standing of the bar of the State of Virginia and the District of Columbia. I am admitted pro hac vice to practice before this Court. I am an attorney with the law firm Latham & Watkins LLP, counsel for Tapestry, Inc. (“Tapestry”), in the above-captioned action in the U.S. District Court for the Southern District of New York, *Federal Trade Commission v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y.). I make this declaration in support of the Motion to Exclude Dr. Loren Smith’s Opinions Regarding and Relying on His Diversion Analysis. I have personal knowledge of the facts set forth in this declaration.¹

¹ Exhibits 2-3, 5 were designated as Confidential Materials under the Stipulated Protective Order, ECF No. 70, and as such will not be filed publicly. Pursuant to Rule 4(B)(iii)(c) of this Court’s Individual Rules of Practice in Civil Cases, Defendants are concurrently filing a letter-motion to the Court concerning those and other documents proposed to be sealed.

2. Attached to this declaration and identified in the index below as Exhibit 1 is a true and correct copy of Plaintiff's Memorandum of Points and Authorities in Support of Plaintiff's Motion in Limine, *United States v. H&R Block, Inc.*, No. 11-cv-00948-BAH (D.D.C. Aug. 24, 2011), ECF No. 67.

3. Attached to this declaration and identified in the index below as Exhibit 2 is a true and correct copy of an excerpt of the Initial Expert Report of Loren Smith (July 26, 2024), which contains information designated confidential by Defendants.

4. Attached to this declaration and identified in the index below as Exhibit 3 is a true and correct copy of an excerpt of the Expert Report of Fiona Scott Morton (August 7, 2024), which contains information designated confidential by Defendants.

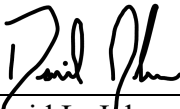
5. Attached to this declaration and identified in the index below as Exhibit 4 is a true and correct copy of an excerpt of the transcript of the deposition of Loren Smith (August 20, 2024).

6. Attached to this declaration and identified in the index below as Exhibit 5 is a true and correct copy of an excerpt of the transcript of the deposition of Alice Yu (June 25, 2024) designated confidential by Tapestry.

EXHIBIT INDEX

Ex. No.	Description
1	Pl.'s Mem. of P. & A. in Supp. of Pl.'s Mot. in Limine, <i>United States v. H&R Block, Inc.</i> , No. 11-cv-00948-BAH (D.D.C. Aug. 24, 2011), ECF No. 67
2	Excerpt of Initial Expert Report of Loren Smith (July 26, 2024)
3	Excerpt of Expert Report of Fiona Scott Morton (August 7, 2024)
4	Excerpt of Deposition Transcript of Loren Smith (August 20, 2024)
5	Excerpt of Deposition Transcript of Alice Yu (June 25, 2024)

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 26th day of August, 2024 in Washington, DC.



David L. Johnson